

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

BRADY M.,

Claimant,

vs.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. 2011031044

**DECISION**

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Redding, California, on August 10, 2011.

The Service Agency, Far Northern Regional Center (FNRC), was represented by Phyllis J. Raudman, Attorney at Law.

Claimant was not present at the hearing and was represented by his father.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

**ISSUES**

Is claimant eligible for regional center services based on mental retardation or a “fifth category” qualifying disability (a condition closely related to mental retardation, or that requires treatment similar to that required for individuals with mental retardation), pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000?<sup>1</sup>

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

## FACTUAL FINDINGS

1. Claimant is an eighteen-year-old unconserved young man who lives with his adoptive parents and four adoptive siblings. He was removed from his biological parents' home as an infant, in critical condition, due to parental neglect. Child Protective Services (CPS) placed claimant in foster care with his adoptive parents, and they adopted him when he was three years old. He has been diagnosed with ADHD (Attention Deficit Hyperactivity Disorder) inattentive type, and has behavioral impairments including poor impulse control, academic failure, oppositional behavior, poor social skills and poor concentration.

Claimant was originally referred to FNRC by the Tehama County Department of Social Welfare Children's Services when he was four and one-half months old. He received Early Intervention services after that time. He was later referred, at age seventeen, by his sister who was concerned that he may need ongoing support after finishing high school.

2. On October 15, 2010, FNRC Intake Specialist, Kathleen Hamill, completed a Social Assessment of claimant. The FNRC Interdisciplinary Team then met on January 26, 2011, to determine claimant's eligibility for services. After considering the October 15, 2010 Social Assessment, and all available records, the team determined that claimant was not eligible for regional center services.

3. As a result of the eligibility team determination, A Notice of Proposed Action (NOPA) was issued on January 27, 2011, informing claimant that he did not meet the criteria for FNRC eligibility. The NOPA stated:

[Claimant] does not have mental retardation and shows no evidence of epilepsy, cerebral palsy, autism, or disabling condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation. Eligibility Review (multi-disciplinary team) determined on 1/26/11 that [claimant] is not eligible for FNRC services based on Psychological evaluations dated: 1/14/09 by Reid McKellar, Ph.D.; 12/20/07 by Red Bluff Joint Union High School District; 3/26/03, 4/23/03 & 4/24/03 by Tehama County Dept. of Education. Social Assessment dated: 10/15/10 by Kathleen Hamill, Intake Specialist. IEP dated: 2/9/10 by Tehama County SELPA.

4. On February 27, 2011, claimant's father filed a Fair Hearing Request in his behalf, disputing his ineligibility for services stating,

[Claimant] has an IQ of 73 w/ multiple psychological problems.  
[Claimant] is turning 18 and has no ability to function by himself.

I need help with services for [claimant] to be able to function in society. He can not make rational decisions on his own.

5. An Informal Meeting was held between claimant's father and Melissa Gruhler, FNRC Case Management Supervisor, on March 25, 2011, to address the decision made by the Eligibility Review Team.

After the Informal Meeting, FNRC's Executive Director, Laura Larson, informed parent of her determination by letter dated March 30, 2011, which included the following:

At this meeting (Informal Meeting) you provided Mrs. Gruhler with a Summary of Standard Scores from WJ III Normative – update Tests of Cognitive Abilities, dated March 3, 2011, a written statement supporting need for services and High School transcripts and copies of other records already submitted to Far Northern Regional Center for Review. These records continued to support the decision that your son has a Learning Disability and does not meet the eligibility criteria for regional center services.

After considering all the information provided to me by Mrs. Gruhler, I have decided to uphold the eligibility review team's determination that [claimant] does not meet the eligibility requirements for regional center services. No new information was submitted that would change the team's decision . . .

6. Pursuant to the Lanterman Act, section 4500, et seq., regional centers accept responsibility for persons with developmental disabilities. Section 4512 defines developmental disability as follows:

“Developmental disability” means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual....[T]his term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation [commonly known as the “fifth category”], but shall not include other handicapping conditions that are solely physical in nature.

7. California Code of Regulations, title 17, section 54000, further defines the term “developmental disability” as follows:

(a) “Developmental Disability” means a disability that is

attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Development Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

8. Welfare and Institutions Code section 4512, subdivision (1), defines substantial disability as:

(1) The existence of significant functional limitation in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

9. Jan Edward Freemon, Ph.D., was a FNRC Staff Clinical Psychologist for approximately fourteen years. In that position he conducted numerous assessments, and has been a member of the Eligibility Review Committee that determines whether an individual meets the eligibility requirements for regional center services. He explained that an individual must have one of five conditions to be eligible for regional center services: autism, cerebral palsy, epilepsy, mental retardation, or a condition closely related to mental retardation or one which requires treatment similar to that required for individuals with mental retardation. Dr. Freemon testified that based on a review of the records and his professional expertise, claimant does not appear to have any of those conditions.

10. The diagnostic criteria for “Mental Retardation” as set forth in section 4512 is defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR)<sup>2</sup> to require:

A. Significantly subaverage intellectual functioning: an IQ of approximately 70 or below on an individually administered IQ test...

B. Concurrent deficits or impairments in present adaptive functioning (i.e., the person’s effectiveness in meeting the standards expected for his or her age by his or her culture group) in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community

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<sup>2</sup> The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) is the current standard for diagnosis and classification. It is a multiaxial system which involves five axes, each of which refers to a different domain of information as follows:

Axis I	Clinical Disorders
	Other Conditions That May Be a Focus of Clinical Attention
Axis II	Personality Disorders
	Mental Retardation
Axis III	General Medical Conditions
Axis IV	Psychosocial and Environmental Problems
Axis V	Global Assessment of Functioning

resources, self-direction, functional academic skills, work, leisure, health, and safety.

C. The onset is before 18 years.

11. School Psychologist Michelle Sneed assessed claimant for the Tehama County Department of Education on March 26, 2003, and April 23-24, 2003. Claimant was ten years old. He was referred by his mother for assessment to determine eligibility for special education services due to “low academics in all areas; difficulty following directions and staying on task” As part of this Psycho-Educational Study the Wechsler Intelligence Scale for Children-Third Edition (WISC-III) was utilized and concluded the following:

Verbal IQ	90	<u>Scale</u>	<u>IQ/Index</u>
Performance IQ	84	Verbal Comprehension	93
Full Scale IQ	86	Perceptual Organization	93
		Freedom from Distractibility	87
		Processing Speed	77

Dr. Freemon testified that claimant’s scores did not meet the DSM-IV criteria for a diagnosis of mental retardation nor did they demonstrate a cognitive deficit closely related to mental retardation. Dr. Freemon noted that claimant’s scores showed a discrepancy in his processing speed and he explained that processing speed and freedom from distractibility factors are often depressed in individuals with ADHD. These scores relate to “how rapidly you can attend, focus and process information in your mind.”

12. The Red Bluff Joint Union High School District- Special Education Department completed claimant’s Triennial Evaluation on December 20, 2007. The Woodcock-Johnson Tests of Cognitive Abilities-Third Edition Brief Ability Scale (“an individually administered brief measure of intelligence, consisting of three subtests which measure acquired knowledge, fluid reasoning and cognitive efficiency”) was administered. The report noted that “this scale is considered appropriate for screenings and/or reevaluations when a full comprehensive assessment does not appear to be necessary. The results indicated low average range overall cognitive functioning level, Brief Intellectual Ability SS=83. Verbal ability SS=94 was measured within the average range indicating relative strengths in vocabulary knowledge and language development. [Claimant] scored within the average range in both verbal comprehension and abstract/fluid reasoning. Weaknesses were measured in processing speed.”

Adaptive behavior was not assessed as this was “not an area of suspected disability.”

Assessment of academic achievement noted “ongoing weaknesses in written language and math skills.” Weaknesses were also noted in “study skills and work habits,” specifically “lack of consistent focus and effort, following directions and remaining on-task.” The IEP team determined that “[claimant’s] processing speed weaknesses along with below grade level skills in reading, writing and math negatively impact his ability to access the general curriculum

without Special Education support services.” Claimant receives special education services under the handicapping condition of Specific Learning Disability.

13. Claimant was referred for evaluation to J. Reid McKellar, Ph.D., Clinical Psychologist, by the Tehama County Mental Health Children’s Access Treatment Team. The evaluation report dated January 14, 2009, stated that claimant was referred “due to his history of maladaptive behavior which has reportedly inhibited his social and emotional functioning.” Dr. Reid noted that claimant “has behavioral impairments including poor impulse control, academic failure, oppositional behavior, poor social skills and poor concentration.” Dr. Reid made the following Clinical Diagnoses:

Axis I:	314.01 Attention Deficit Hyperactivity Disorder NOS 315.9 Learning Disorder NOS
Axis II:	V71.09 (No Diagnosis on Axis II)
Axis III:	Organic Impairment
Axis IV:	-I-Social Immaturity
Axis V:	45

Dr. Reid recommended “Risperdol [sic] to aid in impulse control and judgment” and an antipsychotic medication as the “best choice as a medication augmentation due to [claimant’s] organic impairment.” He also opined that certain observed behaviors, “a tendency to talk to himself”, and “reported vague auditory hallucinations”, could be early signs of a thought disorder and merited “reassessment in a few years in light of his extensive family history of mental illness.”

14. Claimant’s Tehama County Selpa IEP dated February 25, 2010, stated that he originally entered special education on January 4, 2005, and remained eligible for services based on a qualifying disability of Specific Learning Disability (SLD).

15. A subsequent IEP, dated December 21, 2010, confirmed the SLD eligibility and stated that “[claimant’s] history of processing speed weaknesses negatively impact his ability to access the general curriculum without Special Education supports and services.” It also noted that [claimant] “has been previously diagnosed with ADHD” and “had a history of poor impulse control, poor social skills and poor coping skills. He is currently working with an outside therapist in the areas of; improving coping skills, problem-solving skills and setting boundaries.”

This IEP contained post-high school transition planning information stating that “[claimant] has only 14 more credits to complete to meet graduation credit requirements. Parent/guardian requests ISP (Independent Study Program). [Claimant] has an open file with Dept. of Vocational Rehabilitation and will begin to access their services as soon as he completes his credits.” His post-secondary goals included “enrolling in classes at Shasta College to earn a degree in Agriculture and to work full-time as a Ranch Hand or Farmer and/or as a mechanic.” He entered the Red Bluff Joint Union High School Independent Study Program.

16. Claimant's High School transcript states that as of February 14, 2011, he met graduation requirements for a diploma. He did not pass the CAHSEE (California High School Exit Exam).

17. A Children First Mental Health Outpatient (Child) Service Plan dated February 27, 2011 provided the following DSM-IV diagnoses:

Axis I:	314.01 ADHD Combined Type; 313.81 Oppositional Defiant D/O; 315.9 Learning D/O NOS
Axis II:	V71.09 No Diagnosis
Axis III:	In utero substance abuse exposure; neurological deficits (suspected by psychologist)
Axis IV:	A Primary support group; B Social; C Educational, Problems Moderate

The Service Plan was "developed to address dysfunctional responses to mood disorder, stress, anxiety, thought process/psychosis."

18. On March 3, 2011, just prior to claimant's eighteenth birthday, he was administered the "WJ III Normative Update Tests of Cognitive Abilities" through Red Bluff High School. His "GIA (std.) score" at that time was 74. Dr. Freemon noted the discrepancy in this score from that of earlier testing and explained that results may be sensitive to distractibility, difficulty focusing and processing. He testified that when viewing inconsistent scores, one looks to the highest score as being a better indication of true potential. An individual "can have a poor testing day but nothing can cause you to test higher than your ability..."

19. Claimant's father testified genuinely and compellingly to the concerns he has for his son. He described numerous situations where claimant's actions have resulted in serious consequences. While camping with his family, claimant stole a light from another campsite and lit a dangerous bonfire. He was expelled from school for possessing a three and one-half inch locked blade knife. Claimant lies and steals, whether or not he wants the item, and he caused his sister's home to be burglarized. He broke several toes in his father's foot by stomping on it with a cowboy boot and he views inappropriate photographs of twelve -year- old girls on the internet.

His father voiced his frustration with the educational system noting that claimant "never achieved his IEP goals" and doesn't "read or tell time." He opined that claimant's IEPs contain post-secondary goals that he could never attain.

Claimant's father stated that he doesn't know how to "acquire the help [claimant] needs so he can have a long and fruitful life." He needs to "find his niche." His father is concerned that he is not going to live long enough to take care of him and that if something is not done, "he will end up in the penitentiary." He stated that his son has "no impulse control" and "if he



doesn't belong at Far Northern, he just needs help." He asked at hearing for any help FNRC could give him.

20. The evidence presented demonstrates that claimant is not eligible for FNRC services based upon a diagnosis of mental retardation.

21. In addressing eligibility under the fifth category, the Court in *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129, stated in part:

...The fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.

22. Dr. Freemon testified that claimant did not meet the requirements for regional center eligibility. Testing results did not indicate a finding of mental retardation and the eligibility team "could not identify any kind of adaptive impairment that was attributed to a cognitive disorder as opposed to other conditions that can contribute to adaptive functioning difficulties." Claimant did not demonstrate a degree of global intellectual impairment similar to that possessed by persons with mental retardation. Dr. Freemon testified persuasively that any deficits in claimant's adaptive skills would most likely be related to his mental health conditions and learning disabilities.

Nor were the treatments required for these conditions demonstrated to be similar to those specifically required by an individual with mental retardation. Claimant would be better served from a treatment perspective of an individual with mental health and learning disorders. Those treatments would not be the same or similar to those required by individuals with mental retardation.

23. There was no evidence presented to demonstrate that claimant suffers from cerebral palsy, epilepsy or autism.

## LEGAL CONCLUSIONS

1. Eligibility for regional center services is limited to those persons meeting the eligibility criteria for one of the five categories of developmental disabilities set forth in section 4512 as follows:

"Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual....[T]his term shall include mental

retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation [commonly known as the “fifth category”], but shall not include other handicapping conditions that consist solely physical in nature.

Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act.

2. The evidence was persuasive that claimant has limitations. He has an extensive mental health history, primarily evidenced by his diagnosis of ADHD and Oppositional Defiant Disorder, as well as Learning Disabilities. His lack of impulse control is a primary concern. While these conditions present substantial difficulties for claimant, the evidence did not prove that claimant’s current impairments resulted from a qualifying condition which originated and constituted a substantial disability before the age of eighteen. There was no evidence to support a finding of mental retardation or a condition closely related to mental retardation, or that requires treatment similar to that required for individuals with mental retardation. It was not established that claimant has autism, cerebral palsy or epilepsy. Accordingly, he does not have a developmental disability as defined by the Lanterman Act and is not eligible for services through FNRC.

## ORDER

Claimant’s appeal from the Far Northern Regional Center’s denial of services is denied.

DATED: August 24, 2011

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SUSAN H. HOLLINGSHEAD  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**